IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.736 OF 2006
IN
COMPANY PETITION NO.643 OF 1991

M/s.Narendra Steel — Petitioner
versus
Mrs.Usha Vasant Desai — Applicant
versus
Official Liquidator, High Court, Bombay — Respondent

ALONG WITH
COMPANY APPLICATION (L) NO.657 OF 2006
IN
COMPANY PETITION NO.643 OF 1991

Mrs.Usha Vasant Desai — Applicant
versus
Official Liquidator, High Court, Bombay — Respondent

CA 736/2006 :-

Ms.Rakha Tawde i/by M.V.Kini & Co. for Corporation Bank.
Ms.K.V.Gautam, Act.O.L.present.

CA(L) No.657.2006 :-

Mr.V.R.Dhond with Mr.Sanjay Udeshi i/by Sanjay Udeshi & Co. for applicant.
Mrs.Rekha Tawde i/by M.V.Kini & Co. for Corporation Bank.
Ms.K.V.Gautam, Act.O.L. present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th July 2006

PC :

1. Perused the application and the affidavit in support so also the reply of the Official Liquidator.

2. Before proceeding further, the Official Liquidator brings to my notice that the claims of the workers are still being investigated and there are other dues of the company in liquidation. It is, therefore, on this position emerging from the affidavit in reply and the uncontroverted figures therein, that I am proceeding to consider the application preferred by Ms.Usha Desai who is a Guarantor of the dues which is due and payable to a nationalised bank namely Corporation Bank.

3. Shri Dhond - learned counsel appearing for the applicant and the learned advocate appearing for the Corporation Bank do not dispute that consent terms have been arrived at before Debts Recovery Tribunal-I, Mumbai in Original Application No.301 of 1999 between the Corporation Bank and the guarantor-applicant before me. Shri Dhond invites my attention to clauses 2 and 3 of the consent terms which have been duly signed by the applicant as also the authorised signatory of the Corporation Bank.

4. Shri Dhond submits that the company in liquidation was a venture of the husband of applicant and after initially doing well, it ran in difficulty. The order of winding up was passed on 14th October 1994. My attention is invited by Shri Dhond to the statements in paras 9 to 12 of the affidavit in support and it is his submission that if before 31st July 2006 the balance amount for Rs.15.00 lakh is not released in favour of Corporation Bank then grave, irreparable harm, loss and injury would be caused to the applicant and her daughter. The only asset which is presently available is the residential premises. They are being occupied by the applicant and her daughter. The applicant has made efforts and managed to pay the dues of the Corporation Bank. Now, only Rs.15.00 lakhs are remaining.

5. The Official Liquidator has invited my attention to the relevant provisions of Companies Act and contends that at this stage the amount of Rs.15.00 lakh if released to the Corporation Bank, mandate of the aforesaid provisions is likely to be breached. Similarly, there are claims of the workers and Sales Tax Department

which are being investigated. Allowing Rs.15.00 lakh to be paid over from the proceedings lying with the Liquidator would jeopardise these claims and hence this application may be rejected.

6. After hearing Shri Dhond and learned advocate for the Corporation Bank so also the Official Liquidator in-charge, I am of the view that no prejudice would be caused if the applicant is permitted to honour her obligation under the consent terms subject to appropriate orders being passed at a later stage including directing the Corporation Bank to make good the short fall, if any. Needless to state that as an when that occasion arises and the Corporation Bank is called upon by the Official Liquidator to bring this amount or any other further sum, all contentions of the Corporation Bank and the Official Liquidator are kept open. At this stage learned advocate for the Corporation states that in fact the Corporation Bank has lodged claim for Rs.25.00 lakh with the Official Liquidator which is pending investigation. The Official Liquidator states that subject to proof being furnished and the claim being investigated and adjudicated, that the Corporation Bank can claim any amounts over and above the amount already

released. Even this aspect need not be gone into at this stage.

7. In the peculiar facts and circumstances of this case and without this order being treated as a precedent for any other cases, the company application is allowed in terms of prayer clause (b). Official Liquidator to release the amount on production of an ordinary copy of this order duly authenticated by the Registry.

(S.C.DHARMADHIKARI, J.)